



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-2147 FAX (603) 271-6588



John and Catherine Stump  
9 Gail Circle  
Topsfield, MA 01983

Re: 140 Lord Road, Wakefield, NH  
Wetland File #2002-744

ADMINISTRATIVE ORDER  
No. WD 05-06

March 22, 2005

**A. INTRODUCTION**

This Administrative Order is issued by the Department of Environmental Services, Water Division to John and Catherine Stump pursuant to RSA 482-A:6. This Administrative Order is effective upon issuance.

**B. PARTIES**

1. The Department of Environmental Services, Water Division ("DES"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. John and Catherine Stump are individuals having a mailing address of 9 Gail Circle, Topsfield, MA 01983.

**C. STATEMENTS OF FACTS AND LAW**

1. Pursuant to RSA 482-A, the Department of Environmental Services ("DES") regulates dredging, filling, and construction in or on any bank, flat, marsh, wetland, or swamp in and adjacent to any waters of the state. Pursuant to RSA 482-A:11, I, the Commissioner of DES has adopted Wt 100 *et seq.* to implement this program.
2. RSA 482-A:3, I states that "no person shall excavate, remove, fill, dredge or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [DES]."
3. RSA 482-A:14, III provides that "(f)ailure, neglect or refusal to comply with [RSA 482-A] or rules adopted under [that] chapter, or an order or condition of a permit issued under [RSA 482-A], and the misrepresentation by any person of a material fact made in connection with any activities regulated or prohibited by [RSA 482-A] shall be deemed violations of RSA 482-A".
4. Administrative Rule Wt 402.02(a)(1)a. states, "Approvable standard dimensions for a dock shall not exceed the following dimensions:...In lakes and ponds of 1,000 acres or more...For seasonal docks, a deck width of 6 feet and deck length of 40 feet, measured from normal high water mark..."

5. Administrative Rule Wt 402.09(c) states, "Structures over the waters shall not be allowed for the transfer of any activities usually associated with land, including, but not limited to sunbathing and picnicking."

6. John and Catherine Stump are the owners of property located at 140 Lord Road in Wakefield, NH, more particularly described on the Town of Wakefield Tax Map 77 as Lot 89 ("the Property").

7. On April 30, 2002, DES sent Mr. and Mrs. Stump a letter stating that DES had received a complaint alleging wetlands violations on the Property.

8. On June 7, 2002, DES personnel conducted an inspection of the Property and discovered existing dock and deck structures.

9. On June 13, 2002, DES sent the Stumps a letter referencing the June 7, 2002 inspection, requesting evidence that the dock and docking structure on the Property were grandfathered, as there were no permits issued for the existing structures.

10. On October 22, 2002, DES received a Standard Dredge and Fill Application for the Property. Pictures of the existing structures, submitted with the Application, show a 14' x 14' docking structure, on posts, at the end of a narrow access dock.

11. On November 15, 2002, DES sent the Stumps a letter stating that they had provided insufficient evidence to demonstrate that the existing dock and docking structure qualified for grandfathered status. The letter also stated, "If you are unable to provide further detailed information to demonstrate the [dock and docking structure] docking facility is a legal preexisting facility, DES will request a revised proposal for construction of a legal docking facility."

12. On February 14, 2003, DES received a Certification for Grandfathered Shoreline Structures for the Property and a letter from a previous owner of the Property, stating that the dock and docking structure was installed in 1973.

13. On December 22, 2003, DES sent the Stumps a letter stating that their application to retain the 14' x 14' docking structure had been denied and that:

a. Wetland Bureau application #1990-2311 for the Property, filed in November of 1990, provided no evidence of a docking structure on the Property;

b. Wetland File #1990-2311 documents a wooden structure on the lakebed of Pine River Pond during the winter of 1990;

c. DES personnel determined that the wooded structure referenced in 13(b), above, is an abandoned float/swim platform;



- d. A field inspection conducted by DES personnel on January 17, 1991 documented no existing docking structure on the frontage;
  - e. DES has no record of a permit issued for the docking structure;
  - f. The existing docking structure fails to comply with Wt 402.02; and
  - g. The existing docking structure must be permanently removed.
14. On May 13, 2004, DES personnel conducted an inspection of the Property and requested that the 14' x 14' docking structure be removed from the shoreline and placed out of the Wetland Bureau's jurisdiction, as requested by the December 22, 2003 letter.
15. On November 15, 2004, DES personnel conducted an inspection of the Property and discovered that the 14' x 14' docking structure had been placed at the shoreline, within the Wetland Bureau's jurisdiction.
16. On July 12, 2004, DES received a letter and from a neighbor and pictures dated June 29, 2004. The pictures show the 14' x 14' docking structure in the water supporting children's recreational equipment, a kayak, a paddleboat and an inflatable boat.

#### **D. DETERMINATION OF VIOLATIONS**

1. John and Catherine Stump have violated RSA 482-A:3 by constructing a dock in wetlands without a permit from DES.
2. John and Catherine Stump have violated Administrative Rule Wt 402.02 by constructing a dock that exceeds the approvable dimensions.
3. John and Catherine Stump have violated Administrative Rule Wt 402.09 by constructing a dock for the transfer of activities usually associated with land, such as boat storage.

#### **E. ORDER**

Based on the above findings, DES hereby orders John and Catherine Stump as follows:

1. Within 30 days of issuance of this Order, the 14' x 14' dock must be permanently removed from the Wetland Bureau's jurisdiction.
2. Within 30 days of issuance of this Order, DES must receive photographic documentation showing that the 14' x 14' dock has been removed from the Wetland Bureau's jurisdiction.
3. The 14' x 14' dock may not be reinstalled without a permit issued by DES.
4. Send correspondence, data, reports, and other submissions made in connection with this Administrative Order, **other than appeals**, to DES as follows:

Collis Adams  
DES Water Division  
29 Hazen Drive  
P.O. Box 95  
Concord, NH 03302-0095  
Fax: (603) 271-6588  
e-mail: cadams@des.state.nh.us

#### F. APPEAL

Any person aggrieved by this Order may request DES to reconsider the Order within 20 days of the date of the Order. The request for reconsideration must describe in detail each ground for the request. DES may grant a rehearing, if in its opinion, good cause is provided in the motion.

Filing an appeal or motion for reconsideration does not relieve John or Catherine Stump of the obligation to comply with the Order.

#### G. OTHER PROVISIONS

Please note that RSA 482-A:13 and RSA 482-A:14 provide for administrative fines, civil penalties, and criminal penalties for the violations noted in this Order, as well as for failing to comply with the Order itself. John and Catherine Stump remain obligated to comply with all applicable requirements, in particular restoration and stabilization of the Properties. DES will continue to monitor John and Catherine Stump's compliance with applicable requirements and will take appropriate action if additional violations are discovered.

This Order is being recorded in the Carroll County Registry of Deeds so as to run with the land.



COPY

Harry T. Stewart, P.E., Director  
Water Division



COPY

Michael P. Nolin, Commissioner  
Department of Environmental Services

Certified Mail/RRR: 7099 3400 0003 0695 1921

cc: Gretchen R. Hamel, Legal Unit Administrator ✓  
Public Information Officer, DES PIP Office  
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB  
Carroll County Registry of Deeds  
Wakefield Conservation Commission  
Wakefield Board of Selectmen/Municipal Clerk  
File # 2002-744